

10/30/87
11/30/87



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Employee Assistance Program - Local Travel Expenses
File: B-226569
Date: November 30, 1987

DIGEST

An agency may allow reimbursement of local travel expenses for visits to the agency's Employee Assistance Program Counselor located at another agency where a determination is made that the travel is advantageous to the government. While there is no provision regarding travel expenses in the statutes or regulations authorizing the Program, under the Federal Travel Regulations the Federal Communications Commission may allow reimbursement based upon its determination that payment would be in the government's interest. The approval of the employee's reimbursement voucher by the appropriate official in accordance with the agency's regulations is sufficient to constitute an agency determination that the travel was advantageous to the government.

DECISION

ISSUE

This is in response to a request for a decision concerning the claim of a Federal Communications Commission (FCC) employee for local travel expenses incurred in connection with the employee's visits to the Employee Assistance Program (EAP) counselor.^{1/} Specifically, FCC questions whether appropriated funds may be used to pay these local travel costs. For the reasons stated below, we conclude that the costs may be paid.

BACKGROUND

The FCC has contracted with other government agencies to provide counseling services to its employees since 1985. The current FCC counselor is employed by the United States

^{1/} This request is from Geoffrey K. Sherman, Authorized Certifying Officer, Federal Communications Commission (FCC).

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Secret Service and maintains an office at that agency, which is not within normal walking distance of the FCC.

In March of 1986, an FCC employee was referred to the EAP counselor by his supervisor in an effort to obtain counseling for problems that were affecting his job performance. The employee made 12 visits to the counselor during the period March through June 1986, and was allowed to attend these sessions on official time. These visits were held at the counselor's office and resulted in taxicab fares totaling \$19.20. The submission included the original signed voucher, certified and approved for payment, that was submitted by the employee for reimbursement of these fares.

In light of these circumstances, the agency asks the following questions:

"First, may the FCC use appropriated funds to pay local travel costs to visit an EAP counselor?

"Second, if the answer is yes to the above question, may the FCC pay local travel costs when it appears that its own internal regulations may prohibit such payment? Or does the agency have discretion to change or amend its own administrative policies and allow payment retroactively?

"Third, if payment is allowed and since the agency is required by public law 91-616 to develop and maintain appropriate prevention, treatment and rehabilitation programs for its employees, does it matter whether employees voluntarily visit the EAP counselor or whether the employee is referred by his/her supervisor?"

OPINION

Use of Appropriated Funds

Generally, the costs of medical or health care or treatment for civilian government employees are personal to the employees, and appropriated funds may not be used to pay them, unless provided for by statute or in the contract of employment. 53 Comp. Gen. 230 (1973) and cases cited therein. However, the Congress has provided statutory

authority for the use of appropriated funds for employee health in certain circumstances. 57 Comp. Gen. 62 (1977).

The Office of Personnel Management (OPM) is responsible for developing and maintaining, in cooperation with the Secretary of Health and Human Services and with other federal departments and agencies, appropriate prevention, treatment and rehabilitation programs and services for federal civilian employees with alcohol or drug problems, respectively. 42 U.S.C. § 290dd-1 (1982) and 42 U.S.C. § 290ee-1 (1982). Under 5 U.S.C. 7901 (1982), heads of departments and agencies are authorized to establish health service programs for the purpose of promoting and maintaining the physical and mental fitness of employees of the federal government, and agencies are authorized to contract for these programs.

OPM's policies and guidelines for implementing these programs are contained in 5 C.F.R. Part 792 (1987) and Federal Personnel Manual, chapter 792 (Inst. 337, Oct. 2, 1986). Counseling services under these employee assistance programs may include: alcohol and drug abuse, emotional, financial, marital, family, and legal problems. The scope of these programs is determined by each agency. However, the basic functions of the employee counseling program are:

- (1) short-term counseling related to problem identification;
- (2) referral for treatment and rehabilitation to an appropriate community service or professional resource; and
- (3) follow-up to aid an employee in achieving an effective readjustment to his or her job during and after treatment. FPM, ch. 792, § 6-3. Inst. 337.

There is no expression in the statutes or their legislative histories of a congressional intent to pay travel expenses for employees participating in the counseling program. There is also no reference to travel expenses in OPM's regulations and guidance. Since Congress generally provides explicit authorization for such payments (see, e.g., 5 U.S.C. § 5751(b), travel expenses for witnesses), specific authority for agency use of appropriated funds to pay

employee travel costs cannot be found within the statutory framework of the Program. See Bureau of Alcohol, Tobacco and Firearms v. Federal Labor Relations Authority, 464 U.S. 89 (1983). There is, then, no requirement that agencies pay the travel costs incurred by employees who participate in the program. However, agencies are not precluded from making such payments upon a determination that they serve the convenience of the agency or are otherwise in the primary interest of the government. Id., at 107, f.n. 17.

The Federal Travel Regulations, para. 1-3.1a (Supp. 1, September 28, 1981), allow as a transportation expense local travel by taxicab between places of business at an official station "if authorized or approved as advantageous to the Government." Under this provision, the allowance for reimbursement for use of a taxicab is discretionary with the agency involved and is to be exercised in light of all the pertinent facts. In the present circumstances, the local travel costs were incurred incident to the employee's participation in the EAP. The question, then, is whether the FCC considered this participation to be in the government's interest.

Employee Assistance Programs such as FCC's are part of a concerted effort on the part of the federal employer to deal with a wide range of employee problems which adversely impact on job performance, since the government has a valid interest in preventing loss of work time and work efficiency. See, FPM, ch. 792, §§ 1-2, Inst. 261 and 6-1, Inst. 337. As such, employee participation in the program is seen to be a benefit to the government as well as the employee. Appropriately, the FCC has provided for the granting of a reasonable amount of official time for the employees to confer with EAP staff. See FCC Instruction 1202.1, § 6-2 (Feb. 14, 1984). In this case, the employee was allowed to attend all the program sessions on official time, which would seem to indicate that the FCC considered his attendance to be in the government's interest.

Moreover, we have held that the approval of the reimbursement voucher by the appropriate official in accordance with the agency's regulations is sufficient to constitute an agency determination that the mode of travel is advantageous to the government. B-186065, Oct. 8, 1976; B-173279, Aug. 16, 1971. Assuming, then, that the

employee's voucher was properly certified and approved by the appropriate authorizing official, we would have no objection to the allowance of travel costs in this case.

FCC Instruction 1202.1

The FCC refers to two provisions contained in the FCC Instruction 1202.1 which may prohibit payment of the local travel costs. Section 3-4.d states that it is the employee's responsibility to "provide for any expenses incurred in seeking counseling or treatment from a community resource just as for any other health condition." Similarly, section 6-4, pertaining to the expenses of rehabilitation, states that "employees are responsible for any expenses incurred for counseling or treatment, just as they are for any other health condition."

We do not believe these provisions would preclude FCC from allowing payment of the taxicab fares as being in the government's interest. In this case, the costs were incurred by the employee in the course of his visits to the designated agency counselor for short-term diagnostic and interim counseling in accordance with the basic functions of the EAP. The provisions quoted above appear to be concerned with employee expenses for treatment or other care sought outside of the EAP, such as long-term rehabilitation or treatment from a community resource to which the employee may be referred by the EAP counselor. Since the employee is not expected to pay to see the EAP counselor, in accord with the statutory purpose for which the agency programs were established, these provisions could not have been meant to be applicable to participation in the EAP itself.

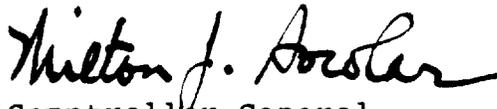
We note that this distinction between government interest in the short-term EAP and other longer-term rehabilitation programs is made regarding time away from the office. Section 6-2 of FCC Instruction 1202.1 grants official time for the sessions with EAP staff, but section 6-3 provides for the use of appropriate leave for the purpose of participating in long-term treatment programs.

Voluntary Participation

The FCC further questions whether, if payments of the local travel costs could be allowed, it matters whether employees

voluntarily visit the EAP counselor or whether the employee is referred by a supervisor. Since the determination of whether to pay the taxicab fares is within the discretion of the agency, it is for FCC to determine the conditions under which the costs will be allowed as beneficial to the government. However, we note that nowhere in the statutory and regulatory scheme is there any distinction made between voluntary participation or referral in terms of employee access to the program. In fact, voluntary participation is encouraged by the FCC in section 1-4.f of FCC Instruction 1202.1. This is not an issue in this case, however, since the employee was referred to the EAP by a supervisor.

In view of the foregoing, we are of the opinion that the employee in this case may be reimbursed for the local travel expenses. We are returning the voucher for payment accordingly, if otherwise correct.



Acting Comptroller General
of the United States